

CIVIL RIGHTS & LIBERTIES SECTION

To: Joint Committee on Finance
From: Civil Rights & Liberties Section, State Bar of Wisconsin
Date: April 11, 2017
Re: Opposition to LIRC elimination

The Civil Rights & Liberties section of the State Bar opposes the elimination of the Labor and Industry Review Commission ("LIRC" or "Commission") in the Governor's proposed budget by replacing Commission review of workers' compensation, equal rights, and unemployment cases with review by a division administrator.

Currently, the Commission serves as the administrative equivalent of an appellate court. The decisions appealed to the Commission are given independent review to assess whether statutory due process and procedure provisions are followed as well as whether the substantive workers' compensation, equal rights, or unemployment law requirements are followed. The Commission plays an important role in interpreting the meaning and application of the statutes it oversees.

The Commission is an independent panel with three commissioners appointed by the governor and confirmed by the senate, serving six-year terms at staggered, two-year intervals. The division administrators who would now be deciding appeals are state employees, appointed by the Secretaries of DWD and DOA, and would not be confirmed by the senate. As such, Civil Rights members are concerned the proposed process of administrative review could be compromised. Given that the Department presently accrues to itself substantial funds for the unemployment fraud it alleges against claimants, the section also worries the elimination of LIRC creates a situation in which the appearance of fair application of the law could also be in jeopardy.

Civil Rights & Liberties members are concerned that eliminating the Commission creates a conflict of interest, as the division administrator would now be reviewing and exercising ultimate decision making power over claims brought by and against the State and its agencies, including the very division the administrator heads. The Commission was designed as an independent commission so as to preserve sufficient autonomy in hearing claims against the state (including against the DWD divisions) to avoid a conflict of interest. The Commission insulates decision making on individual cases from political concerns and improper communications among attorneys who may be connected to the parties in a case. This section believes the elimination of LIRC walks back the very reasons that led to its formation.

Furthermore, section members believe the consistency and credibility of decisions would be diminished with the elimination of LIRC. The Commission has developed special expertise and precedent in interpreting the statutes it oversees stretching back for decades. This expertise and precedent provides invaluable specialized guidance to litigants and courts and consistency of interpretation and enforcement of the fair employment, workers compensation and



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unemployment compensation statutes that is needed to maintain the credibility and respect for this body of law.

Lastly, litigants' concern over a loss of institutional knowledge within the administrative review process will likely result in more requests for judicial review to the circuit courts, placing an even greater burden on the judicial system.

For all of these reasons, the Civil Rights & Liberties section believes that the independent decision making provided by the Commission is crucial and respectfully requests that the Joint Committee on Finance exclude this proposal from the 2017-2019 budget.

For more information, please do not hesitate to contact the State Bar lobbyist, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.